

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig 3. This sheet, which includes Fig. 3, replaces the original sheet including Fig. 3. In amended Figure 3, the line designating the core wrap has been amended such that the line extends to the core wrap and not to the topsheet.

Attachment:

Replacement Sheet

REMARKS

Claim Status

Claims 1-12, 14-18, and 20, are pending in the present application. No additional claims fee is believed to be due.

Claims 13 and 19 are cancelled without prejudice.

Claim 1 has been amended to more specifically characterize the structure of the disposable absorbent article. Support for the amendment can be found in the specification, for example, at page 5, lines 27-29 and claim 1 as filed. Additionally, claim 1 has been amended to more specifically characterize the acquisition layer. Support for this amendment can be found in the specification, for example, in claim 13 as filed.

Claims 2-12 and 14 have been amended to address the Office's expressed issues with these claims. Support for these amendments can be found in the specification, for example, in the claims as filed. Additionally, claim 14 has been amended such that claim 14 depends from claim 1 instead of claim 13. Claim 9 has been amended to correct its dependency. Support for this amendment can be found in the specification, for example, in claims 8 and 9 as filed.

Claim 15 has been amended to more specifically characterize the acquisition layer. Support for the amendment can be found in the specification, for example, in claim 16 as filed.

Claims 17-18 and 20 have been amended to address the Office's expressed issues with these claims. Support for these amendments can be found in the specification, for example, in the claims as filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Objections to the Drawings

The Office has objected to the drawings because the line designating item 42 in Figure 3 should extend to the core wrap not the topsheet. Applicants submit herewith this response a replacement sheet amending the line for the item 42.

Objections to the Description

The Office has objected to the Description in numerous locations. Regarding point 3, the Applicants submit herewith this response an amended abstract. Regarding point 4, the Applicants have amended the specification in several locations designating any trademarks utilized as such. However, with regard to the term “spandex”, Applicants have found no basis to designate this term as a trademark. Moreover, Applicants have found the term “spandex” in several dictionaries without a designation as a trademark. An example of such a dictionary is The American Heritage College Dictionary, 4th ed., 2002. Regarding point 5, Applicants have amended the specification in numerous locations in an earnest effort to address all of the issues brought up by the Office.

Rejection Under 35 USC §112, Second Paragraph

The Office Action states that claims 3, 10, 16, and 19-20, are rejected under 35 U.S.C. § 112, second paragraph. The Office states that claims 3, 10, 16, and 19-20, are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have amended claims 3, 10, and 11, to provide adequate antecedent basis. Additionally, Applicants have amended claims 16 and 20 and cancelled claim 19. Based on the foregoing amendments, Applicants assert that claims 3, 10, 11, 16, and 20, are in compliance with 35 U.S.C. § 112, second paragraph and respectfully request the withdrawal of the rejection of claim 3, 10, 11, 16, and 20.

Rejection Under 35 USC §102 Over Cramer et al.

The Office has rejected claims 1-9 and 12-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,645,569 issued to Cramer et al., hereafter, “Cramer I”; U.S. Patent No. 6,863,933 issued to Cramer et al., hereafter, “Cramer II”; and U.S. Patent Publication No. 2004/0052957 filed on behalf of Cramer et al., hereafter, “Cramer III”. Applicants respectfully traverse the rejection.

Case law provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Cramer I:

Cramer I teaches methods of inkjet printing nanoparticle systems for types of soft surfaces. (Abstract). Cramer I further teaches that “[t]he nanoparticle system can be formed of materials, compositions, devices, appliances, procedures, methods, conditions, etc. serving a common purpose of modification of surfaces... to bring about desired benefits.” (col. 9, lines 15-20). Additionally, Cramer I teaches that “materials that have been subjected to a high energy surface treatment and have a plurality of nanoparticles deposited thereon can be suitable for a great many uses.” (col. 25, lines 23-25). Such uses include portions of disposable absorbent articles which include “topsheets, acquisition layers, distribution layers, wicking layers, storage layers, absorbent cores, absorbent core wraps, and containment structures.” (col. 25, lines 26-32).

However, Cramer I does not teach “an absorbent core disposed between the topsheet and the backsheet” as is recited, *inter alia*, in amended claim 1. Similarly, Cramer I does not teach “selecting an acquisition layer substrate from the group consisting of porous polymeric films, nonwoven materials and combinations thereof”, as is recited, *inter alia*, in amended claim 15.

Cramer II:

Cramer II teaches coating compositions comprising nanoparticle systems used to impart surface modifying benefits for all types of soft surfaces and in some cases, hard surfaces. (Abstract). Similar to Cramer I, Cramer II teaches that “materials that have been subjected to a high energy surface treatment and have a plurality of nanoparticles deposited thereon can be suitable for a great many uses.” (col. 25, lines 17-19). Also, similar to Cramer I, Cramer II provides the same exemplary uses. (col. 25, lines 23-26).

However, similar to Cramer I, Cramer II does not teach “an absorbent core disposed between the topsheet and the backsheet” as is recited, *inter alia*, in amended claim 1. Similarly, Cramer II does not teach “selecting an acquisition layer substrate from the group consisting of porous polymeric films, nonwoven materials and combinations thereof”, as is recited, *inter alia*, in amended claim 15.

Cramer III:

Cramer III teaches coating compositions which comprise nanoparticle systems. (Abstract). Additionally, Cramer III provides the same exemplary uses for material that

have been subjected to high energy surface treatments having a plurality of nanoparticles as the exemplary uses in Cramer I and Cramer II. (paragraph 0140).

However, similar to Cramer I and Cramer II, Cramer III does not teach “an absorbent core disposed between the topsheet and the backsheet” as is recited, *inter alia*, in amended claim 1. Similarly, Cramer III does not teach “selecting an acquisition layer substrate from the group consisting of porous polymeric films, nonwoven materials and combinations thereof”, as is recited, *inter alia*, in amended claim 15.

For the foregoing reasons, Applicants assert that amended claim 1 and amended claim 15 are not anticipated by Cramer I, Cramer II, and/or Cramer III. Additionally, because claims 2-12, 14-18, and 20, depend from amended claims 1 or 15, Applicants assert that these claims are similarly not anticipated for at least all of the reasons presented above with regard to amended claims 1 and 15.

Rejection Under 35 USC §102 Over Rohrbaugh et al.

The Office has rejected claims 1-9 and 12-20 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0151634 filed on behalf of Rohrbaugh et al., hereafter, “Rohrbaugh”. Applicants respectfully traverse the rejection.

Rohrbaugh teaches coating compositions which comprise nanoparticle systems. (Abstract). Additionally, similar to the references discussed above, Rohrbaugh teaches that materials subjected to high energy surface treatments having a plurality nanoparticles deposited thereon are suitable for many uses. (paragraph 0139). Some of those uses include “topsheets, acquisition layers, distribution layers, wicking layers, storage layers, absorbent cores, absorbent core wraps and containment structures.” (paragraph 0139).

However, Rohrbaugh does not teach “an absorbent core disposed between the topsheet and the backsheet” as is recited, *inter alia*, in amended claim 1. Similarly, Rohrbaugh does not teach “selecting an acquisition layer substrate from the group consisting of porous polymeric films, nonwoven materials and combinations thereof”, as is recited, *inter alia*, in amended claim 15.

Because Rohrbaugh does not teach all of the claim elements of amended claim 1 and amended claim 15, Applicants assert that Rohrbaugh does not anticipate amended claim 1 and amended claim 15. Additionally, because claims 2-12, 14-18 and 20, depend from amended claim 1 or amended claim 15, Applicants assert that claims 2-12, 14-18,

and 20, are not anticipated by Rohrbaugh for at least the reasons presented above regarding amended claim 1 and amended claim 15.

Rejection Under 35 U.S.C. § 103(a) over Cramer I, Cramer II, Cramer III, or Rohrbaugh
in view of Aziz and Thompson

Claims 10-11 have been rejected under 35 U.S.C. § 103(a) as being obvious over Cramer I, Cramer II, Cramer III, or Rohrbaugh, in view of U.S. Patent No. 4,909,803 issued to Aziz et al., hereafter, "Aziz", and U.S. Patent No. 5,368,926 issued to Thompson et al., hereafter, "Thompson". Applicants respectfully traverse the rejection by the Office.

Cramer I issued on November 11, 2003, Cramer II issued on March 8, 2005, and Cramer III published on March 18, 2004. The present application has a priority date of February 10, 2003. This means Cramer I, Cramer II, and Cramer III, only qualify as prior art under 35 USC §102(e). Furthermore, the present application and Cramer I, Cramer II, and Cramer III were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, The Procter & Gamble Company.

Therefore, since the current application has a filing date after November 29, 1999, Applicants assert that Cramer I, Cramer II, and Cramer III, are not available as a references under 35 USC §103(c).

Regarding the remaining references in the obviousness rejection, in order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* Additionally, the MPEP provides that "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." In re Warner, 379 F.2d 1011, 1016 (CCPA 1967).

Regarding the motivation to combine, the MPEP states that "[w]hen the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper." MPEP § 2142 citing Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). Additionally, case

law provides that “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” MPEP § 2142, III, citing In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the rejection, the Office states:

Therefore, to employ a storage layer of the materials claimed in claim 10 and a core between a topsheet and backsheet as taught by Aziz and Thompson with the disposable absorbent articles of Cramer et al ‘569 or ‘933 or ‘957 or Rohrbaugh et al ‘634 would be obvious to one of ordinary skill in the art in view of the recognition that it is well known to use such structures in disposable absorbent articles and disposable absorbent articles being disclosed by the prior art to Cramer or Rohrbaugh.

(Office Action page 8).

As shown above, the Office has provided no motivation for the modification of Rohrbaugh. Instead the Office asserts that it would have been obvious based on the disclosure of various structures within the cited references of Aziz and Thompson. As stated in the MPEP citing In re Mills, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” MPEP § 2142, III.

Based on the foregoing, Applicants assert that the Office has not established a *prima facie* case of obviousness against claims 10-11.

Rejection Under 35 USC §103(a) Over Weisman et al. in view of Aziz and Thompson

Claims 1-6, 10-16, and 18-20, are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,469,746 issued to Weisman et al., hereafter, “Weisman”, in view of Aziz and Thompson. Applicants respectfully traverse the rejection by the Office.

The suggested combination of references does not teach all of the claim elements of amended claim 1 and amended claim 15. Amended claim 1 recites, *inter alia*, that said acquisition layer comprises “an acquisition layer substrate; and a hydrophilicity boosting composition coated on said substrate... and wherein said acquisition layer substrate has been treated with a high energy surface treatment.” The suggested combination fails to teach the above claim elements.

Weisman teaches “[f]ibrous webs comprising fibers coated with a continuous film comprising silica [having] excellent absorbent and wicking properties.” (Abstract). Weisman further teaches that the “[s]ilica may be either negatively charged or positively charged.” (col. 3, line 67-68). Weisman also teaches that the “thermoplastic webs are subsequently hydrophilized by depositing the silica comprising coating onto the fibers.” (col. 5, lines 12-14). However, Weisman does not teach or suggest the combination of a hydrophilicity boosting composition coated on said acquisition layer substrate, and wherein said acquisition layer substrate has been treated with a high energy surface treatment, as is recited, *inter alia*, in amended claim 1.

Thompson teaches “a fluid accepting, transporting and retaining structure, useful in disposable absorbent articles.” (Abstract). Thompson further teaches capillary channel fibers can be treated to render them hydrophilic. (col. 12, lines 1-2). In that regard Thompson teaches that “[h]ydrophilizing agents can be added to the polymer at various stages prior to use, though preferably prior to drawing of the capillary channel fibers to their final size.” (col. 12, lines 34-37). Thompson further teaches that “[a]nother method for hydrophilizing fibrous surfaces involves subjecting said surfaces to ionizing radiation, e.g. in a plasma, and such methods have the advantage that there is no surfactant residue on the surface of the fibers.” (col. 12, lines 51-55). However, Thompson does not teach or suggest the combination of a hydrophilicity boosting composition coated on said acquisition layer substrate, and wherein said acquisition layer substrate has been treated with a high energy surface treatment, as is recited, *inter alia*, in amended claim 1.

Aziz teaches “[a] disposable absorbent article for absorbing liquids, particularly body fluids such as urine.” (Abstract). Aziz further teaches that an “absorbent core 14 has first and second opposed faces 20 and 22 respectively, and comprises an absorbent layer 24 and first and second tissue layers 26 and 28.” (col. 3, lines 60-63). However, Aziz does not teach or suggest the combination of a hydrophilicity boosting composition coated on said acquisition layer substrate, and wherein said acquisition layer substrate has been treated with a high energy surface treatment, as is recited, *inter alia*, in amended claim 1.

Based on the foregoing, Applicants assert that the combination of Weisman, Thompson, and Aziz do not teach all of the claim elements of amended claim 1. As such, Applicants assert that amended claim 1 is nonobvious over the combination of Weisman, Thompson, and Aziz. Because claims 2-12 and 14 depend from amended claim 1, Applicants assert that the combination of Weisman, Thompson, and Aziz, similarly do not teach all of the claim elements of claims 2-12 and 14. Accordingly, Applicants assert that claims 2-12 and 14 are nonobvious over Weisman, Thompson, and Aziz.

Amended claim 15 recites, *inter alia*, “treating said acquisition layer substrate with a high energy surface treatment” and “coating said acquisition layer substrate with a hydrophilicity boosting composition.” The suggested combination of references, i.e. Weisman, Thompson, and Aziz, do not teach all of the claim elements of amended claim 15.

As established previously, Weisman, Thompson, and Aziz fail to teach or suggest the combination of a hydrophilicity boosting composition coated on said acquisition layer, and wherein said acquisition layer substrate has been treated with a high energy surface treatment. Based on the foregoing, Applicants assert that the combination of Weisman, Thompson, and Aziz similarly fail to teach or suggest “treating said acquisition layer substrate with a high energy surface treatment” and “coating said acquisition layer substrate with a hydrophilicity boosting composition”, as is recited, *inter alia*, amended claim 15.

Because the suggested combination of Weisman, Thompson, and Aziz fails to teach or suggest all of the claim elements of amended claim 15, Applicants assert that claim 15 is nonobvious over the suggested combination of Weisman, Thompson, and Aziz. Because claims 16-18 and 20 depend from amended claim 15, Applicants assert that the suggested combination of Weisman, Thompson, and Aziz, similarly fails to teach or suggest all of the claim elements of claims 16-18 and 20. As such, Applicants assert that claims 16-18 and 20 are nonobvious over the suggested combination of Weisman, Thompson, and Aziz.

Regarding claims 13-14, and 16, the Office states that based on the teachings of Weisman at col. 5, lines 21-33 and Thompson at col. 12, lines 34-58, that “[t]herefore, to also treat the surface of the substrate of ‘746 with high energy treatment as taught by ‘926 such that a treated surface is produced would be obvious to one of ordinary skill in the art in view of the recognition that such would provide a wettable surface in combination with the coating without any surfactant residue or dissolving and the desirability of such by ‘746.” (Office Action, page 10). Applicants respectfully traverse the rejection.

Weisman teaches:

Since thermoplastic fibrous webs are hydrophobic, such webs are not wetted by silica aquasols. Silica aquasols may be made to wet the webs by adding surfactants. An undesirable effect of this approach is that some of the surfactant is deposited on the fiber surface along with the silica. When webs made of such fibers are used for the

absorption of aqueous liquids, the surfactant dissolves in the liquid to be absorbed. This lowers the liquid/vapor interface tension and thereby negatively affects the wicking and partitioning of the liquid into the web. The use of surfactants is therefore undesirable for the purpose of the present invention and should be avoided.

Thermoplastic webs can be wetted with a silica aquasol by immersing the web in the sol under reduced pressure. In this process the web is contacted with the sol in an airtight vessel.

(col. 5, lines 21-33).

In contrast, Thompson teaches that a surface treatment of polymeric fibers may involve treating the surface with a hydrophilizing agent especially a surfactant. (col. 12, lines 5-7). Thompson further teaches that another method may include "subjecting said surfaces to ionizing radiation, e.g. in a plasma." (col. 12, lines 51-53).

Because Weisman teaches that surfactant are not suitable for the present invention and because Weisman teaches that for the present invention, the web is wetted via immersion under reduced pressure, one of ordinary skill in the art would be dissuaded from utilizing an ionizing radiation treatment as described in Thompson.

Additionally, there is no teaching in the suggested combination which establishes any relationship between the amount of hydrophilicity boosting composition and the liquid strike through times of the definition. As such, the required amount of hydrophilicity boosting composition is not mere optimization of ranges.

Based on the foregoing, and for the reasons provided above with regard to amended claims 1 and 15, Applicants assert that claims 14 and 16 are nonobvious over the suggested combination of Weisman, Thompson, and Aziz.

Rejection Under 35 USC §103(a) Over Weisman et al. in view of Aziz and Thompson and in further view of the Materials Handbook

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Weisman in view of Aziz and Thompson and in further view of the Materials Handbook definition of Alumina. Applicants respectfully traverse the rejection by the Office.

Applicants are unclear as to what the Office is asserting to be equivalent. Applicants assume, based on the citation from the Materials Handbook, that alumina and Boehmite alumina are being asserted as equivalents.

Based on this assumption, Applicants would like to note that the Materials Handbook states that alumina is “[t]he oxide of aluminum Al_2O_3 .” In contrast, the Materials Handbook states that Boehmite alumina “is called a colloidal alumina, but it is an aluminum monohydrate, AlOOH .” Aluminum monohydrate is not the same compound as the oxide of aluminum. Thus, Applicants assert that alumina and Boehmite alumina are not necessarily equivalents.

Additionally, according to the teachings of Weisman, the desired function of alumina is to make aquasols of positively charged silica. (col. 4, lines 26-27). Thus, Weisman teaches that the colloidal silica act as the nanoparticles. In contrast, Claim 7 recites, *inter alia*, that the “nanoparticles are selected from the group consisting of... Boehmite alumina.” Because the alumina of Weisman and the Boehmite alumina of claim 7 are not utilized for the same desired function, Applicants assert that alumina and Boehmite alumina are not necessarily equivalents.

Rejection Under 35 USC §103(a) Over Young in view of Early, and Zhu

Claims 1, 8, 15, and 17, are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,432,000, issued to Young, Sr. et al., hereafter, “Young”, in view of U.S. Patent No. 4,468,428, issued to Early et al., hereafter, “Early”, and U.S. Patent No. 6,201,056, issued to Zhu, hereafter, “Zhu”. Applicants respectfully traverse the rejection by the Office.

First, the Office states “[t]o make the hydrophilic inorganic binder which is a silica dispersion/liquid of ‘000 on as taught by Early and Zhu, i.e. includes colloidal silica of the size claimed, instead would have been obvious to one of ordinary skill in the art in view of In re Siebentritt.” (Office Action, page 12). Applicants respectfully disagree.

Early teaches that a suitable binder in the absorbent webs of the invention is cellulose ester which is dissolved in a suitable solvent. (col. 6, lines 62-64). Early further teaches that a thermoplastic web can be hydrophilized by coating the fibers with a hydrophilic material. (col. 7, lines 48-51). Early further teaches that “excellent results are obtained when the structure is treated with colloidal silica.” (col. 7, lines 51-53).

Zhu teaches “[t]he addition of inorganic materials such as colloidal silica provides abrasion-resistant coating without adversely affecting the low surface energy properties.” (col. 1, lines 15-18). Zhu further teaches that “[a]queous colloidal silica dispersions... are available commercially with different particle sizes.” (col. 4, lines 1922).

Young teaches a fiber product comprising dry discontinuous fibers having a binder on at least a portion of the fiber surfaces.” (Abstract). Young further teaches that “high binder levels are preferably used to maximize the bonding and to adhere solid particulate materials to the fibers.” (col. 5, lines 17-20). Young teaches that, the fibers “may be pretreated with surfactants to modify the surface of the fibers.” (col. 8, lines 39-41).

As stated above, the desired function of the binder of Young is to maximize the bonding of the solid particulate matter to the fibers. In contrast, the colloidal silica of Early and Zhu are used for wettability / hydrophilicity purposes. If the colloidal silica performs a different function than the binder, even if the binder can be a silica dispersion/liquid, that does not necessarily imply that colloidal silica is its equivalent.

Second, the suggested combination of references does not teach or suggest the same compositions of nanoparticles as claimed. There is no teaching or suggestion in any of the references of the suggested combination that an acquisition layer includes “an acquisition layer substrate; and a hydrophilicity boosting composition coated on said substrate... and wherein said acquisition layer substrate has been treated with a high energy surface treatment” as is recited, *inter alia*, in amended claim 1. Additionally, there is no teaching or suggestion in any of the references of the suggested combination that a process for hydrophilizing an acquisition layer involves “treating said acquisition layer substrate with a high energy surface treatment...and coating said acquisition layer substrate with a hydrophilicity boosting composition” as is recited, *inter alia*, in amended claim 15. As such, there is not sufficient evident to conclude that the article described within the combination of references would necessarily have the same hydrophilicity boosting capability as the claimed acquisition layer.

Additionally, the claimed “hydrophilicity boosting amount of particles” is not mere optimization of ranges. The Office asserts that because the general conditions of the claim are disclosed by the prior art, it is not inventive to discover the optimum or workable ranges. (Office Action page 12). However, there is no teaching in the suggested combination which establishes any relationship between the amount of hydrophilicity boosting composition and the liquid strike through times of the definition. As such, the

required amount of hydrophilicity boosting composition is not mere optimization of ranges.

Based on the foregoing, Applicants assert that a *prima facie* case of obviousness has not been established against amended claims 1 and 15. Additionally because claims 8 and 17 depend from amended claims 1 and 15, respectively, Applicants assert that the Office has similarly failed to establish a *prima facie* case of obviousness against these claims as well.

Rejection Under 35 USC §103(a) Over Young in view of Early, Zhu, and the Materials Handbook

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Young, in view of Early, Zhu, and in further view of the Materials Handbook. Based on the amendments to the claims, Applicants assert that a *prima facie* case of obviousness has not been established against amended claim 1. As such, Applicants assert that a *prima facie* case of obviousness has similarly not been established with regard to claim 9.

Obviousness Type Double Patenting

First, the Office has rejected claims 1-5, 12-16, and 18-20, under the judicially created doctrine of obviousness type double patenting as being unpatentable over U.S. Patent No. 6,863,933. Applicants submit herewith a terminal disclaimer.

Second, the Office has rejected claims 6-9 and 17 under the judicially created doctrine of obviousness type double patenting as being unpatentable over U.S. Patent No. 6,863,933 in view of Cramer I. Applicants submit herewith the terminal disclaimer as above.

Third, the Office has rejected claims 10-11 under the judicially created doctrine of obviousness type double patenting as being unpatentable over U.S. Patent No. 6,863,933 in view of Aziz and Thompson. Applicants submit herewith the terminal disclaimer as above.

Fourth, the Office has provisionally rejected claims 1-20 under the judicially created doctrine of obviousness type double patenting as being unpatentable over copending Application No. 10/758,375 or 10/758,138 in view of Weisman, Aziz, and Thompson. Since the rejection is provisional based upon an application, Applicants request that this rejection be held in abeyance until such time that Application No. 10/758,375 and/or 10/758,138 are allowed and issue as patents.

Common Ownership

The Office states that a "showing that the inventions were commonly owned at the time the invention in the application was made will preclude a rejection under 35 U.S.C. § 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. § 102(f), or (g), or 35 U.S.C. § 102(e)." (Office Action, page 17). Applicants submit that Application Serial No. 10/758,138, U.S. Patent No. 6,863,933, U.S. Patent No. 6,645,569, Application Serial No. 10/758,066, and Application Serial No. 10/758,375, were, at the time the invention of Application Serial No. 10/758,138 was made, owned by or subject to an obligation of assignment to The Procter and Gamble Company.


Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph, § 102(e), and § 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Signature

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